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Supreme Court, U.S.
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10-990 NOV 22 2010

No. OFFICE OF THE CLERK

Supreme Court of the United States

STEPHEN J. WILLIAMS,

Petitioner,

vs.

FRANCIS J. FOLEY, III,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE WINDHAM GEOGRAPHIC AREA OF THE CONNECTICUT SUPERIOR COURT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

A. Did institutionalized bias within the Connecticut judiciary deny Petitioner a determination by a panel of unbiased appellate court justices and judges?

B. Is Connecticut Practice Book § 62-7, as applied by the Appellate Court, unconstitutionally vague?

PARTIES TO THE PROCEEDING

The Petitioner is Stephen J. Williams, an attorney whose right to practice law in Connecticut has now been suspended without due process for five and one-half years. Petitioner appears *pro se*.

The Respondent in this proceeding is the Honorable Francis J. Foley, III, Senior Judge of the Connecticut Superior Court, on his order suspending Petitioner's right to practice law. Judge Foley personally prosecuted the matter in the Superior Court. He did not appear in either the Connecticut Appellate Court nor in the Connecticut Supreme Court.*

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* This petition is correctly captioned and the writ of certiorari, if issued, would be correctly directed to the Connecticut Superior Court. See Sup.Ct.R. 12.4, 12.6 and 14.1(b). See also Gressman, Geller, Shapiro, Bishop & Harnett, Supreme Court Practice, p. 431 (9th ed., 2007), ("[C]ounsel is not bound by the caption used in the court below; counsel for the petitioner is free to clarify or improve it so as to portray accurately the adversary position of the contending parties before the Court"). The caption in Connecticut's appellate courts was controlled by Conn. Practice Book § 68-4 ("Cases brought to the supreme or appellate court otherwise than by writ of error shall be entitled as they were in the judgment of the trial court.") Judge Foley undertook his order to show cause under the heading of the ongoing criminal prosecution. Whilst Petitioner challenged both the criminal conviction and his disciplinary suspension in the Connecticut courts, before this Court he now only challenges Judge Foley's suspension order. Furthermore, as neither the Connecticut Appellate Court nor the Connecticut Supreme Court considered the matter on its merits, the writ of certiorari must be directed to the Connecticut Superior Court. "The controlling principle is that the writ should be directed to the highest court of the state that actually ruled on the merits." Supreme Court Practice, p. 439.

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See also *R.J. Reynolds Tobacco Co. v. Durham County, N.C.*, 479 U.S. 130, 138 (1986). Here, the only court to rule on the merits was the Superior Court. The address of the Connecticut Superior Court, Windham Geographic Area at Danielson is 120 School Street, Danielson, Connecticut 06239, USA. Tel. +1 860-779-8480.

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OPINIONS AND ORDERS BELOW

During an on-going criminal prosecution of Petitioner in the Connecticut Superior Court, the Honorable Francis J. Foley, III, in his roll at that time of Administrative Judge for the Windham Geographic Area, brought an attorney disciplinary proceeding against Petitioner through an order to show cause dated 22 April 2005. Petitioner seeks review of the Connecticut Superior Court's order dated 18 July 2005 suspending his right to practice law. *In re Williams*, 67 Conn.L.J. 8 at 1B (Conn.Super., 23 August 2005). App. A. See also Memorandum of of [sic] Decision, Order to Show Cause re: Attorney discipline, *Connecticut v. Williams*, Docket No. MI04-6287590S (Conn.Super., 18 July 2005). App. B.

On 17 November 2005, following Petitioner's criminal conviction in the Superior Court, Petitioner appealed to the Connecticut Appellate Court challenging both his conviction and the suspension of his right to practice law. By unpublished order, a single judge of the Appellate Court *sua sponte* ordered the appeal dismissed. *Connecticut v. Williams*, Docket No. 27416 (Conn.App.Ct., 6 October 2009). App. C. Petitioner sought reconsideration of that judge's order. The Appellate Court, by unpublished order, "ordered that the motion for reconsideration is granted, but the relief requested therein is denied. The appeal remains dismissed." Id., 9 December 2009. App. D.

Petitioner petitioned the Connecticut Supreme Court for certification to appeal. That court denied Petitioner's petition on 25 March 2010. *Connecticut*

v. Williams, 295 Conn. 917, 990 A.2d 868 (2010). App. E. Petitioner sought reconsideration of the denial of certification to appeal. Reconsideration was denied by the state Supreme Court on 24 June 2010. *Connecticut v. Williams*, (Conn.Sup., 25 June 2010). App. F. [1]

JURISDICTION

This Court has jurisdiction to review by writ of certiorari "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had ... where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution ... or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution". 28 U.S.C. § 1257(a).

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[1] Based solely upon Judge Foley's 18 July 2005 suspension order, the Appellate Division of the Supreme Court of the State of New York suspended Petitioner's right to practice law in New York as reciprocal discipline. *In re Williams*, 33 A.D.3d 38, 819 N.Y.S.2d 508 (1st Dept., 2006), *leave to appeal dismissed in part, denied in part*, 8 N.Y.3d 858, 863 N.E.2d 109, 831 N.Y.S.2d 105 (2007), *appeal dismissed*, 8 N.Y.3d 1007, 870 N.E.2d 687, 839 N.Y.S.2d 448 (2007), *re-argument denied*, 9 N.Y.3d 919, 875 N.E.2d 892, 844 N.Y.S.2d 173 (2007), *cert. denied*, 553 U.S. 1018 (2008). The District of Columbia Court of Appeals also summarily suspended Petitioner's right to practice law as reciprocal discipline based upon Judge Foley's order. *In re Williams*, Docket No. 06-BG-682 (D.C., 6 March 2007), *cert. denied*, 552 U.S. 1141 (2008), *rehearing denied*, 552 U.S. 1305 (2008). See also *In re Williams*, 3 A.3d 1179 (D.C., 2010) (petition for rehearing pending). Petitioner's right to practice law in New York has now been suspended for four and one-half years and his right to practice law in the District of Columbia has now been suspended for three years and ten months.

Petitioner seeks review of the Connecticut Appellate Court's dismissal of Petitioner's appeal and the Connecticut Supreme Court's refusal to grant certification to appeal, both of which, as demonstrated below, violated the due process clause of the Fourteenth Amendment to the United States Constitution.[2]

Justice Ginsburg ordered that Petitioner may file a petition for certiorari on or before 22 November 2010. *Williams v. Foley*, Docket No. 10-A-279 (U.S. Sup., 15 September 2010). This Petition is timely in that it was filed on that date.

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[2] Petitioner initially raised his federal claims in the Superior Court through his written Motion for Mandamus, 8 March 2005; Motion to Quash Order to Show Cause, 12 May 2005; Motion for a Bill of Particulars, 9 June 2005; Motion to Suppress, 18 July 2005; Memorandum of Law, 18 July 2005; Motion for Stay of Execution, 23 September 2005; Motion to Dismiss, 28 October 2005; Motion to Compel, 5 May 2006; Letter to Honorable Antonio C. Robaina, Windham Geographic Area Administrative Judge, 12 September 2006; and Motion to Disqualify the Honorable Michael E. Riley and Francis J. Foley, III, 20 August 2009. Petitioner then preserved his federal claims in the Appellate Court through his Brief, 19 October 2009. The Appellate Court's handing of Petitioner's appeal triggered fresh federal claims which were raised in that court through Petitioner's Motion to Disqualify the Chief Disciplinary Counsel, 31 July 2009; Motion for Reconsideration *en banc*, 8 September 2009 and Motion for Reconsideration, 16 October 2009. Petitioner's federal claims were again preserved in the Connecticut Supreme Court through his Petition for Certification, 15 January 2010. Finally, Petitioner's federal claims relevant to the Connecticut Supreme Court's handling of Petitioner's petition for certification were raised in that court through Petitioner's Motion for Leave to File Opposition to Joint Opposition to Petitioner's Petition for Certification, 11 February 2010; and Motion for Reconsideration, 13 April 2010.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

The relevant portions of the U.S. Const. Amend. XIV are set out in the Appendix at App.13.

STATEMENT OF THE CASE

A. Relevant proceedings in the Connecticut Superior Court

Petitioner's appeal to the Connecticut Appellate Court alleged the systematic denial of Petitioner's federal Fourteenth Amendment protected due process rights in the Connecticut Superior Court.

Judge Foley interjected himself into an ongoing criminal prosecution of Petitioner in which he had had no involvement. The judge was not the assigned judge and Petitioner had never previously appeared before him. In fact, the Connecticut judiciary's own procedural rules are clear that under these circumstances, "[c]omplaints against attorneys shall be filed with the statewide bar counsel." Practice Book § 2-32(a). Connecticut judges only have subject matter jurisdiction to act directly "[i]f such cause occurs in the actual presence of the court". Practice Book § 2-45.

Judge Foley took his unusual action following private complaints to him by the Deputy Chief Clerk after the assigned judge, the Honorable Michael Riley,

had granted the State's request that a hearing be held at which the Clerk was to be questioned about a number of administrative errors which had been made in the case. These errors were likely to prove embarrassing, both to the Deputy Chief Clerk and to Judge Foley himself who was, at that time, the Administrative Judge for the Windham Geographic Area and thus responsible for the proper functioning of the clerk's office.

In Connecticut, judicial postings are highly political. See L. Tuohy, *Rowland Sowed Judicial Scandal*, Hartford Courant, 30 April 2006, which makes clear that judges who bring disrespect upon the state judiciary often find themselves punished through the system of assignments and through other administrative means. At that time, Judge Foley was negotiating within the judicial branch administration for his next posting. In fact, Judge Foley left his posting as Administrative Judge shortly after handing down his order suspending Petitioner's right to practice law and soon received his preferred assignment to the Juvenile Court.[3]

By ordering Petitioner's appearance before him at the time and date previously scheduled for the evidentiary hearing by Judge Riley, Judge Foley effectively countermanded a coordinate judge's prior order without entering an order to that effect. Although not the assigned judge in the criminal prosecution, Judge Foley ultimately denied the

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[3] Judge Foley has stated on a number of occasions that juvenile court represents "a rewarding and personally gratifying daily endeavor". See, e.g., F. J. Foley, *An Unexpected Ministry: Reflections of a Judge in the Juvenile Court*, 50 Juv. & Fam. Ct. J. 67, 74 (Winter 1999).

motion in that proceeding which had originally precipitated the evidentiary hearing thus permanently avoiding embarrassment for his clerk and for himself.

Judge Foley held three hearings on his order to show cause during which he managed to violate each and every of Petitioner's constitutionally protected procedural due process rights. His order to show cause failed to appraise Petitioner of what was at issue. He expanded the prosecution to include pleadings filed by Petitioner in his defense. He mislead Petitioner as to the potential sanctions. At each of the three show cause hearings, he denied Petitioner the benefit of counsel. He denied Petitioner the right of confrontation. And he forced Petitioner to take the stand while undergoing criminal prosecution.

The judge's findings of fact were nothing short of a Kafkaesque work of fiction. Every single relevant factual conclusion contained in the judge's Memorandum was plainly contrary to the record.[4]

Judge Foley's legal conclusions were also facially unsound. The judge held that Petitioner had violated Rules 1.1 and 4.4 of the Connecticut Rules of Prof. Conduct despite settled Connecticut case law being

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[4] Indeed, Judge Foley recently repeated many of these same accusations before the Legislative Joint Committee on the Judiciary including outlandish claims of sending "threatening letters", "threatening the court staff" and "frighten[ing]" the Deputy Chief Clerk. T.,10 June 2005, p. 3. See T., Legislative Joint Committee on the Judiciary, 23 February 2009; http://www.cga.ct.gov/2009/JUDdata/chr/2009JUD00223-R001000-CHR.htm (visited 27 July 2009).

clear that Rules 1.1 and 4.4 are only applicable where an attorney is acting on behalf of a client. *Notopoulos v. Statewide Grievance Committee*, 277 Conn. 218, 231 (2006) *cert. denied*, 549 U.S. 823 (2006). Judge Foley found that Petitioner was appearing *pro se* in his own criminal prosecution. Memorandum, p. 4. Similarly, Judge Foley found that Petitioner's letters and pleadings had violated Rule 3.5(3) despite that "Rule 3.5(3) is generally intended to cover disruptive conduct either immediately before, during or after an official proceeding." Memorandum, p. 2-3; *Notopoulos v. Statewide Grievance Committee*, 35 Conn. L. Rptr. 536, 539 (Conn.Super., 2003), *aff'd.*, 277 Conn. 218 (2006). Absent some sort of physical activity at an ongoing hearing, it was impossible for Petitioner to have violated Rule 3.5(3). Finally, Judge Foley found that Petitioner's conduct violated Rule 8.4(4) despite that the conduct which was ascribed to Petitioner was not even remotely similar to the conduct in any previous Connecticut case finding a violation of that rule. Indeed, this Court has previously held that the conduct ascribed to Petitioner could not amount to "conduct that is 'prejudicial to the administration of justice'". *In re Snyder*, 472 U.S. 634, 645 (1985).

This Court recently clarified that "objective standards may also require recusal whether or not actual bias exists or can be proved." *Caperton v. A.T. Massey Coal Co., Inc.*, 129 S.Ct. 2252, 2265 (2009). Here, Judge Foley, who clearly had an "interest in the outcome of [the] particular case", amply demonstrated his bias. Id., 2259-60. Judge Foley's

resolution of this issue was to simply ignore Petitioner whenever he raised the issue.[5]

Judge Foley suspended Petitioner's right to practice law through a written ruling. For whatever reason, the trial court Clerk failed to serve Petitioner with that order despite being required to do so. See Practice Book § 7-5 and C.G.S. § 51-53(a). The trial court subsequently concluded that as a consequence, Petitioner no longer had any avenue of appeal. T., 23 September 2005, p. 7.

B. Relevant proceedings in the Connecticut Appellate Court

Despite the position taken by the trial court, following his conviction in the criminal proceeding, Petitioner did in fact successfully appeal to the Appellate Court challenging both the conviction and the suspension of his right to practice law.

The appeal proved quite contentious with numerous disputes which included a motion to dismiss the appeal by the Chief State's Attorney questioning whether the disciplinary portion of the appeal was properly before the Appellate Court, a motion for review seeking a stay of Petitioner's disciplinary suspension pending the outcome of the appeal and numerous motions to disqualify and to strike challenging the roll of the State's Attorneys,

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[5] See, e.g., Petitioner's Motion to Disqualify the Honorable Michael E. Riley and Francis J. Foley, III, 20 August 2009, which remains undecided even today. Every prior attempt to raise these same issues was similarly ignored.

Disciplinary Counsel and Attorney General in the Appellate Court proceeding.

During this same period, Petitioner also attempted to perfect the record for review by the Appellate Court, as he was required to do. See Practice Book § 61-10. Petitioner was ultimately forced to file a motion in the Appellate Court seeking a writ of mandamus requiring the trial court to afford him access to the complete trial court record after the trial court Clerk unilaterally blocked access. Petitioner had initially filed a motion to compel in the Superior Court seeking to compel the clerk to permit access but that motion was ignored by the trial court. Petitioner was only able to gain access to the trial court file some months later after he had initiated a proceeding before the Connecticut Freedom of Information Commission.

The trial court similarly blocked every other attempt by Petitioner to perfect the record on appeal. For example, on 21 April 2006, Petitioner filed notices that the decision had not been filed as required by Practice Book § 64-1(a). It was not until 18 and 21 months later that Judge Foley and Judge Riley, filed signed transcript excerpts with the trial court. The trial court judges' conduct continued with Judge Riley then taking more than a year to deny a motion for articulation without opinion.

Perfection of the record proved no less contentious in the Appellate Court with first the Chief State's Attorney, and then also the Chief Disciplinary Counsel, opposing Petitioner's writ of mandamus seeking access to the trial court record, opposing

articulation and, ultimately, opposing any sort of review by the Appellate Court.

During the three years and eleven months that Petitioner's appeal was pending in the Appellate Court, Petitioner made a series of motions seeking the extension of his briefing deadline. Petitioner's motions were usually based on the continuing delays by the trial court in completing the record or the pendency of procedural motions in the Appellate Court. See, e.g., Practice Book § 66-5, ¶ 7. Occasionally, delays were also caused by parallel reciprocal disciplinary proceedings in New York or in the District of Columbia which were a direct consequence of Judge Foley's order suspending Petitioner's right to practice law in Connecticut.[6] For the most part, Petitioner's motions for extension of time were consented to by opposing counsel or, at least, went unopposed. Invariably, they were regularly granted by the Appellate Court Clerk or by the Appellate Court itself.

The Appellate Court issued its final ruling relating to the articulation by Judge Riley on 28 July 2009 (three years and three months after Petitioner had timely filed his notice that the trial court decisions had not been filed).[7] As a consequence, Petitioner's

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[6] See footnote. 1, supra. The refusal by the New York and District of Columbia disciplinary authorities to stay their reciprocal discipline proceedings pending the conclusion of the original proceeding in Connecticut resulted in a quadrupling of Petitioner's workload.

[7] The appellate record was not actually complete until the Honorable Emmet Cosgrove's Statement of Decision pursuant to Practice Book § 64-1(a)(1) was filed on 25 September 2009 and served by the Appellate Clerk on the participants on 28 September (or five days *after* the briefing

brief became due on 18 August 2009. Yet the procedural issue of whether to disqualify the Chief Disciplinary Counsel remained pending before that court. Petitioner therefore sought a further extension of his briefing deadline.[8] Despite a lack of opposition to the granting of an extension of time by either the Chief State's Attorney or the Chief Disciplinary Counsel, on 2 September 2009 the Appellate Court:

> ordered, sua sponte, that the appeal will be dismissed unless the brief of the Defendant-Appellant is filed on or before September 23, 2009. The Appellate Court will not entertain additional motions filed by Appellant regarding the Appellant's brief.

On 8 September 2009, Petitioner filed a motion for reconsideration en banc which was denied by the Court without first awaiting a responsive pleading.

Petitioner complied with the Appellate Court's 2 September order by submitting his brief on 23

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deadline set by the Appellate Court in their 2 September 2009 order).

[8] Petitioner also cited additional matters in the trial court which could be expected to affect the record on appeal and the requirement that Petitioner "prepare his reply brief in the reciprocal disciplinary proceeding before the District of Columbia Court of Appeals". Motion for Extension of Time, 18 August 2009, p. 6. Because the Appellate Court's 2 September 2009 order forced Petitioner to immediately suspend work on the District of Columbia brief and instead work on his Connecticut Appellate Court brief, the District of Columbia brief was submitted late and the Court of Appeals refused to file it as a consequence. *In re Williams*, Orders, Docket No. 06-BG-682 (D.C., 22 October 2009, 27 October 2009, 16 December 2009 and 17 March 2010). See footnote 6, supra.

September 2009, as ordered. However, the Appellate Clerk returned the brief to Petitioner for correction pursuant to Practice Book § 62-7.

Then, on 6 October 2009, just 13 days after the Appellate Clerk returned the brief, the Honorable Alexandra DiPentima unilaterally ordered Petitioner's appeal dismissed.

Petitioner sought timely reconsideration of Chief Judge DiPentima's order and also re-lodged his brief with the Appellate Clerk.[9] Finally, on 9 December 2009, the Appellate Court "ordered that the motion for reconsideration is granted, but the relief requested therein is denied. The appeal remains dismissed."

C. Relevant proceedings in the Connecticut Supreme Court

Petitioner sought certification to appeal to the Connecticut Supreme Court arguing that the Appellate Court had wrongly sanctioned Petitioner without first affording him notice and opportunity to be heard as mandated by court rule and by the due process clause. See the federal Fourteenth Amendment; Practice Book § 85-3. Petitioner also argued that Judge DiPentima, acting alone, lacked jurisdiction to dismiss the appeal and that she failed to properly exercise her discretion in dismissing the appeal when she failed to consider whether, in fact,

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[9] Judge DiPentima was at the time the senior judge on all Appellate Court panels which have considered Petitioner's appeal before that court. Judge DiPentima has since been appointed Chief Judge of the Appellate Court.

Petitioner's appellate brief had been timely filed pursuant to Practice Book § 62-7, ¶ 2. Finally, Petitioner argued that Practice Book § 62-7, as applied by the Appellate Court, is unconstitutionally vague in that it deprives a party of any guidance as to the length of time afforded to a party to correct and resubmit a brief which has been returned for correction and, in fact, was applied by Chief Judge DiPentima in such a way as to permit her to dismiss Petitioner's appeal despite his brief having been timely filed pursuant to that procedural rule.

The Connecticut Supreme Court denied Petitioner's petition for certification to appeal on 25 March 2010. *Connecticut v. Williams*, 295 Conn. 917, 990 A.2d 868 (2010), App. E.

At the time Petitioner filed his petition for certification in the Connecticut Supreme Court, Petitioner also had pending before that court an appeal from the dismissal by the Connecticut Judicial Review Council of complaints made by Petitioner against two justices of the Connecticut Supreme Court which had alleged that the justices had engaged in unethical behavior.[10] See Notice of Appeal, 4 December 2009 and Amended Notice of Appeal, 11 December 2009, *In re Complaints against Chief Justice Rogers and Justice Zarella*, Docket No. 18506 (Ct. Sup. Ct.). Both the Honorable Chief Justice Chase T. Rogers and Justice Peter T. Zarella

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[10] Petitioner's complaints had their basis, in part, on the justices' dismissal of a motion to disqualify in relation to that court's consideration of Petitioner's petition for certification to appeal in *Connecticut v. Williams*, 106 Conn.App. 323, 941 A.2d 985 (2008), *cert. denied*, 287 Conn. 908, 950 A.2d 1287 (2008), *cert. denied*, 129 S.Ct. 1683 (2009).

had recused themselves from consideration of Petitioner's earlier petition for certification yet participated in consideration of Petitioner's petition for certification in this case.

Petitioner sought reconsideration of the Connecticut Supreme Court's denial of certification to appeal arguing that Justices Rogers' and Zarella's participation in the consideration and determination of Petitioner's petition for certification in this case while they were also appellees before this same Court in an appeal brought by Petitioner denied Petitioner a determination by a panel of unbiased justices. The state's highest court denied reconsideration. *Connecticut v. Williams*, (Conn.Sup., 25 June 2010), App. F.

REASONS FOR GRANTING THE WRIT

A. Institutionalized bias within the Connecticut judiciary has denied Petitioner a determination by a panel of unbiased appellate court justices and judges.

The Due Process Clause of the Federal Fourteenth Amendment requires that where a state provides a right of appeal in a criminal matter, the state must afford the defendant a fair procedure. *Griffin v. Illinois*, 351 U.S. 12, 18 (1956). "[T]he floor established by the Due Process Clause clearly requires a fair trial in a fair tribunal before a judge with no ... interest in the outcome of [the] particular case." *Bracy v. Gramley*, 520 U.S. 899, 904-5 (1997) (internal citations and quotation marks omitted). See

also *Caperton v. A.T. Massey Coal Co., Inc.*, 129 S.Ct. 2252, 2259-60 (2009).[11]

This Court recently clarified that:

> objective standards may also require recusal whether or not actual bias exists or can be proved. Due process "may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties." [*In re Murchison*, 349 U.S. 133, 136 (1955)]. The failure to consider objective standards requiring recusal is not consistent with the imperatives of due process.

Caperton at 2265.[12]

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[11] Judicial bias is considered a structural error. *Connecticut v Lopez*, 271 Conn. 724, 733 (2004) citing *Tumey v. Ohio*, 273 U.S. 510 (1927). "A structural error creates a defect in the trial mechanism such that, while it is virtually impossible to pinpoint the exact harm, it remains abundantly clear that the trial process was flawed significantly. For this reason, '[e]rrors of this magnitude are *per se* prejudicial and require that the underlying conviction be vacated.' (Emphasis in original.) *Lainfiesta v. Artuz*, 253 F.3d 151, 157 (2nd Cir., 2001), cert. denied sub nom. *Lainfiesta v. Greiner*, 535 U.S. 1019 (2002), citing *Neder v. United States*, [527 U.S. 1, 8-9 (1999)].... 'If a reviewing court determines that the error is of the structural variety, the court's task is at an end.' *Peck v. United States*, 106 F.3d 450, 454 (2nd Cir.1997)." *Lopez* at 739. Structural error claims present issues of law calling for plenary review. Id. at 731.

[12] Connecticut's courts do not comply with *Caperton*. In Connecticut, "a judge's failure to disqualify himself or herself will implicate the due process clause only when the right to disqualification arises from actual bias on the part of that judge." *Connecticut v. Canales*, 281 Conn. 572, 594 (2007).

Due process also requires a judge to recuse himself where he has become "personally embroiled" with the Petitioner to the extent that it is "unlikely for him 'to maintain that calm detachment necessary for fair adjudication'". *Naunchek v. Naunchek*, 191 Conn. 110, 116-17 (1983), quoting *Mayberry v. Pennsylvania*, 400 U.S. 455, 465-66 (1971). This Court recently made clear that:

> The inquiry [as to embroilment] is an objective one. The [reviewing c]ourt asks not whether the judge is actually, subjectively biased, but whether the average judge in his position is "likely" to be neutral, or whether there is an unconstitutional "potential for bias."

Caperton at 2262.[13]

Connecticut's courts only apply an objective standard to the question of whether disqualification is mandated by Canon 2.11(a) of Connecticut's 2011 Code of Judicial Conduct and Practice Book § 1-22(a). *Canales* at 593. *Caperton* makes clear that appellate courts must engage in the same objective analysis to determine whether the due process clause required disqualification. *Caperton* at 2263 ("The judge's own inquiry into actual bias, then, is not one that the law can easily superintend or review"). *Caperton* is also clear that Connecticut's practice of deferring to the judicial authority through the application of an abuse of discretion standard is inappropriate. See, e.g., *Banks v. Thomas*, 241 Conn. 569, 602-03 (1997).

[13] The Connecticut courts also refuse to apply an objective standard to the question of embroilment: "judicial recusal is necessary only in the unusual case where the apparent effect of the contemnor's conduct on the judge against whom the contemptuous conduct was levied is such as to indicate that the judge's impartiality or objectivity reasonably may be called into question." *Hargrove v. Superior Court of*

The proceeding in the Superior Court amounted to little more than a sham proceeding. See pp. 4-8, supra. Consequently, Petitioner documented the jurisdictional violations, the findings of fact which were plainly contrary to the record, the unsupported conclusions of law and the wholesale violations of due process in his brief and other pleadings in the Appellate Court. Petitioner's appeal received a frosty reception.

A key theme within the Connecticut judiciary is the importance of judicial independence. See R. Kay, *The Rule-Making Authority and Separation of Powers in Connecticut*, 8 Conn. Law Rev. 1 (1975). Connecticut's justices give speeches on the topic:

> [A]s an attorney, who recognizes that the Code of Judicial Conduct requires that a judge abstain from public comment about a pending proceeding, you will do your part by publicly defending against unwarranted, unfair, or inappropriate criticism of the judiciary. Similarly legislative intrusions and other intrusions that threaten institutional independence should be opposed by attorneys when they deem that intrusion to be violative of the doctrine of separation of powers.

Prepared Remarks by Justice Zarella, Bar Admission Ceremony, 16 May 2008.[14] Petitioner's appeal came

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Judicial Dist. of Tolland at Rockville, 111 Conn.App. 452, 457-58 (2008), quoting *Banks* at 600.

[14] Speech available at http://www.jud.ct.gov/external/news/Speech/Zarella_051608.html (visited 14 May 2009). Justice Zarella also coauthored a law

at a time when the judiciary viewed that its independence was under threat. T. Scheffery, *Small Changes Kill Big Court Reform Bill*, 6/2/2008 Conn.L.Trib. 1 ("both Judiciary Committee chairmen predicted that a possible constitutional amendment that would explicitly establish legislative oversight of court rules would be 'on the table' in the next session"). And the judiciary clearly wished to avoid anything that might further embarrass the judiciary.[15]

The Connecticut judiciary demonstrated its bias through its use of procedural mechanisms to determine almost ever aspect of Petitioner's appeal.[16] Ultimately, this culminated in Judge DiPentima's

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review article with the Honorable Thomas Bishop in which he warned of the "potential risks to the cherished independence of the judiciary." P. T. Zarella & T. A. Bishop, *Judicial Independence at a Crossroads*, 77 Conn. B.J. 21, 40 (2003). Many of Connecticut's judges are members in the American Judicature Society which has "adopt[ed] judicial independence as a cornerstone issue." http://www.ajs.org/cji/default.asp (visited 30 January 2011). Indeed, there is even a "featured link" to the Society on the Judicial Review Council's web site, http://www.ct.gov/JRC/ (visited 30 January 2011).

[15] Indeed, the Appellate Courts' policy of chilling claims which threaten the standing of the judiciary is made plain by unusually frank comments by Judge Bishop that "mere claims of judicial misconduct, unmoored to the constitutional rights of a litigant and unclaimed for plain error review, should not find a hospitable response on direct appeal." *Embalmers' Supply Co. v. Giannitti*, 103 Conn.App. 20, 69, *cert. denied*, 284 Conn. 931 (2007) (Bishop, J., concurring).

[16] For example, access to the trial court record was blocked. Motions went undetermined. In the end, it took more than three years for Petitioner to perfect the record. Indeed, the record was not actually complete until two days *after* the briefing deadline set by the Appellate Court.

dismissal of Petitioner's appeal just 13 days after Petitioner had timely filed his brief with the Appellate Clerk pursuant to Practice Book § 62-7. Judge DiPentima dismissed Petitioner's appeal even as Petitioner was working to correct errors highlighted by the Appellate Clerk, as he was permitted to do by ¶ 2 of that rule which provides that "[a]ny papers correcting a noncomplying filing shall be deemed to be timely filed if resubmitted to the appellate clerk without delay."

Judge DiPentima dismissed Petitioner's appeal despite Petitioner never having been afforded an opportunity to be heard either on the original order setting a briefing deadline or on the dismissal itself. Basic due process obviously required that he be afforded some sort of opportunity to be heard. *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 671 (1985) (Brennan, J., concurring in part, dissenting in part), citing *In re Oliver*, 333 U.S. 257, 273 (1948). So, also, did the Appellate Court's own procedural rule, Practice Book § 85-3, require that Petitioner be afforded an opportunity to be heard, ("A hearing at which any party may be heard shall be held before the imposition of any sanction").[17]

Indeed, Judge DiPentima acted despite that she clearly lacked subject matter jurisdiction. Practice Book § 66-2(d) makes clear that a single judge of the

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[17] Nor was the denial of the right to be heard harmless error. The Appellate Court's 2 September 2009 order that barred Petitioner from filing motions related to his brief prevented him from making Judge DiPentima aware of serious personal medical issues which were affecting the preparation of Petitioner's brief. Affidavit, 13 October 2009.

Appellate Court cannot dispose of an appeal. This practice book section implements C.G.S. § 51-197c(e) ("Each of the parties in any case shall have a right to be heard by a full panel."). An Appellate Court panel is defined as three or more judges. C.G.S. § 51-197c(a). Section 51-197c is jurisdictional. 1965 Conn. Const. Art. V, § 1 ("The powers and jurisdiction of these courts shall be defined by law.") Indeed, § 51-197c(e) is specifically intended to prevent a single judge from taking the action which Judge DiPentima took.

Assuming that Judge DiPentima actually had the discretion to act, she failed to make any attempt to properly exercise that discretion. The sole issue in determining whether Defendant's brief was deemed timely filed was whether it was being resubmitted it to the Appellate Clerk "without delay". This is purely a question of fact. Yet Judge DiPentima made no attempt to determine this factual issue. Instead, she simply ignored the import of Practice Book § 67-2, ¶ 2. By failing to enquire into the facts, the judge clearly abused her discretion.

Finally, even if Judge DiPentima had afforded Petitioner an opportunity to be heard, and even if she had had the jurisdiction to act and even if she had properly exercised her discretion in acting, her action in dismissing Petitioner's appeal was still highly abnormal. See, e.g., *Connecticut v. Weber*, 221 Conn. 84, 84 (1992) (Berdon, J., dissenting), which catalogues that the Appellate Court waited a full *three months* before dismissing an appeal for failing to file a brief. There is a considerable difference between a three months period when the brief is clearly overdue and the 13 day period which had

elapsed after Petitioner had timely filed his brief with the Appellate Clerk.

The justices of the Connecticut Supreme Court similarly demonstrated their bias. In that court, Justices Rogers and Zarella participated in the consideration and determination of Petitioner's petition for certification while they were also appellees before that same Court in an appeal brought by Petitioner from the Connecticut Judicial Review Council following a complaint to that body which had alleged that they had engaged in ethical misconduct. *In re Complaints against Chief Justice Rogers and Justice Zarella.* Needless to say, by any objective measure, the ongoing personal adversarial relationship between the justices and Petitioner required that they recuse themselves from the proceeding just as they had recused themselves in *In re Complaints against Chief Justice Rogers and Justice Zarella.* See *Withrow v. Larkin*, 421 U.S. 35, 47 (1975) (requiring recusal when "the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable"). Clearly, Justices Rogers' and Zarella's participation violated even the most basic constitutional mandate that "[e]very procedure which ... might lead him not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law." *Tumey v. Ohio*, 273 U.S. 510, 532 (1927).

Indeed, the same objective analysis also required that Justices Rogers and Zarrella recuse themselves due to their adversarial relationship with Petitioner given that the average judge is likely to become "personally embroiled" in such circumstances and it is "unlikely for him 'to maintain that calm

detachment necessary for fair adjudication'". *Naunchek* at 116-7 quoting *Mayberry* at 465-66. Consequently, there is "an unconstitutional 'potential for bias.'" *Caperton* at 2262 quoting *Mayberry*.

Notably, the ethical and due process issues raised in this proceeding are identical to those also raised in *In re Complaints against Chief Justice Rogers and Justice Zarella*. The denial of Petitioner's petition for certification directly aided Justices Rogers' and Zarella's personal interests in that it avoided consideration of these identical issues by the Connecticut Supreme Court and the potential for an outcome which might affect the proceedings in *In re Complaints against Chief Justice Rogers and Justice Zarella*. This violated the basic tenant that "under the Due Process Clause no judge 'can be a judge in his own case [or be] permitted to try cases where he has an interest in the outcome.' *In re Murchison*, 349 U.S. 133, 136 (1955)." *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 822 (1986). Indeed, in *Lavoie* the Supreme Court of the United States specifically held that where a justice participates in a case which may affect other cases in which he has a substantial interest, "his interest [is] 'direct, personal, substantial, [and] pecuniary.'" *Lavoie* at 824 quoting *Ward v. Village of Monroeville*, 409 U.S. 57, 60 (1972), and *Tumey* at 523. The *Lavoie* court made clear that it was applying an objective standard of "whether sitting on the case ... 'would offer a possible temptation to the average ... judge to ... lead him to not to hold the balance nice, clear and true.'" *Lavoie* at 825 quoting *Ward* at 60 and *Tumey* at 532. See also *Caperton* at 2259-61.

The actions of Connecticut's appellate court judges and justices evince something other than impartial decision making. Instead, those actions demonstrate a course of conduct obviously intended to achieve some specific result. Petitioner's brief in his Appellate Court appeal raised issues which were clearly sensitive to Connecticut's judiciary. Indeed, Petitioner argued in his brief that Superior Court judges acted so as to avoid addressing claims of bias and misconduct by coordinate judges. Now Connecticut's appellate courts have demonstrated an identical pattern of conduct which also evinces a similar intention to avoid consideration of such issues on the merits. The inescapable conclusion is that Petitioner is the victim of an institutionalized bias which goes well beyond the actions of one or two Connecticut trial court judges.

B. Connecticut Practice Book § 62-7, as applied by the Appellate Court, is unconstitutionally vague.

"The Fourteenth Amendment's Due Process Clause 'insist[s] that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.'" *Grayned v. City of Rockford*, 408 U.S. 104, 108-109 (1972). See also *Connecticut v. Jacob*, 69 Conn.App. 666, 672-73 (2002) citing *Jordan v. De George*, 341 U.S. 223, 230 (1951).

Connecticut's Practice Book § 62-7, ¶ 2 provides that:

> The appellate clerk may refuse to accept for filing any papers presented in a form not in

> compliance with these rules; in refusing, the appellate clerk shall indicate how the papers have failed to comply. The clerk shall stamp any papers refused with the date on which they were received before returning them, and shall retain a copy thereof. Any papers correcting a noncomplying filing shall be deemed to be timely filed if resubmitted to the appellate clerk without delay.

Petitioner lodged his appellate brief with the Appellate Clerk on a timely basis. Pursuant to § 62-7, the Appellate Clerk refused to accept the brief and returned it to Petitioner for correction. Then, despite ¶ 2 providing that Petitioner's brief would be considered timely filed if resubmitted without delay, just 13 days later Appellate Court Judge DiPentimia ordered Petitioner's appeal dismissed on the basis of "said brief not having been filed". *Connecticut v. Williams*, Docket No. 27416 (Conn.App., 6 October 2009). App. C.

Chief Judge DiPentima made no enquiry into whether Petitioner was acting "without delay" to correct the technical errors in his brief. Nor were the parties afforded an opportunity to address the legal question of what exactly "without delay" means. If Judge DiPentima did consider whether Petitioner acted "without delay," then whatever standard she applied is known only to her. Practice Book § 62-7 provides no guidance as to what is considered "without delay". Nor is there any Connecticut decisional guidance. Indeed, the phrase "without delay" appears to have been used precisely because it is indefinite in term. See *Pellegrino v. O'Neill*, 193 Conn. 670, 480 A.2d 476, *cert. denied*, 469 U.S. 875

(1984), holding 1965 Conn. Const. Art. I, § 10 ("remedy by due course of law ... without ... delay") to be nonjusticiable.[18]

Looking elsewhere for guidance, when Petitioner's petition for certification to the Connecticut Supreme Court was initially rejected by the Chief Justice in *Williams*, 287 Conn. 908, this topic came up in a telephone conversation with Chief Appellate Clerk Michèle Angers. During that conversation, Attorney Angers indicated that in her opinion, there was no specific time period and no specific deadline for compliance. Looking to other courts, in this Court Sup.Ct.R. 14.5 provides that a timely petition for certiorari which is deficient as to form may be corrected and resubmitted to the clerk within *60 days* following the date of the notice of deficiency. Indeed, Connecticut's court cases demonstrate that even where a party has not attempted to file his brief on a timely basis, the Appellate Court has at times waited *three months* before dismissing an appeal after ordering that "[t]his appeal will be dismissed unless the defendant-appellant's brief is filed by...." *Weber* at 88.[19]

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[18] "What then will become of the promise extracted from King John at Runnymede and enshrined in the Magna Charta to delay justice to none, which has been incorporated in article first, § 10 of our state constitution? We have declared ourselves unable to respond to its demand in the present context without exceeding our own constitutional authority. The answer must lie in the hearts and minds of the legislators, who are sworn to support the state as well as the federal constitution and to discharge their duties to the best of their abilities. General Statutes § 1-25. More fundamentally, it must rest with the people who elect them." *Pellegrino* at 685.

[19] Conversely, in the Appellate Court, Senior Assistant State's Attorney Lukban opined that "documents should be filed

As applied by the Appellate Court in this case, Practice Book § 62-7, ¶ 2 clearly deprived Petitioner of due process in that it is unacceptably vague.[20]

CONCLUSION

A summary reconsideration order is appropriate in this matter. See Sup. Ct. R. 16.1.

This is a situation where "the law is well settled and stable, the facts are not in dispute, and the decision below is clearly in error." *Schweiker v. Hanson*, 450 U.S. 785, 791 (1981) (Marshall, J., dissenting). Furthermore, having avoided consideration of all issues in Petitioner's appeal, this is obviously not the situation where the lower court has provided a "carefully reasoned decision". *Oregon State Penitentiary v. Hammer*, 434 U.S. 945, 947 (1977) (Stevens, J. dissenting). Under these circumstances, remand is also appropriate to afford the Connecticut court an opportunity to address Petitioner's constitutional claims. See, for example, *Youngblood*

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within 2-3 days of having been returned for formatting deficiencies." State's Response to Petitioner's Motion for Reconsideration, 26 October 2009, p.9.

[20] Indeed, § 62-7, ¶ 2 appears to have been intentionally left vague. The justices and judges of the Connecticut Supreme and Appellate courts obviously recognized that some of their practice rules were unacceptably vague as they recently edited some provisions of the rules to make time periods more definite. See, e.g., the amendment to Practice Book § 63-3 effective 1 January 2010 which substituted "ten days" for "forthwith". Yet the appellate courts have made no effort to make § 62-7 more definite, either through amendment to the rule or by providing the public with decisional guidance.

v. West Virginia, 547 U.S. 867, 870 (2006) (GVR to afford the state supreme court an opportunity to express its views on the defendant's constitutional claims).

Petitioner therefore asks that this Court grant certiorari, vacate the order denying certification by the Connecticut Supreme Court and remand to the state courts for consideration.

Respectfully submitted,

Stephen J. Williams
Petitioner
12 September Road
Storrs
Connecticut 06268-2806
USA
+1 860-450-1288

APPENDIX

A. *In re Williams*, 67 Conn.L.J. 8 at 1B (Conn.Super., 23 August 2005)

Notice of Suspension of Attorney

Notice is hereby given that on July 18, 2005, this Court ordered Attorney Stephen John Williams suspended from practice of law for a period of six months, effective twenty days from the date of this order. As a condition of his readmission he shall complete a Connecticut Bar Association approved course of instruction on legal ethics and Connecticut Practice and Procedure. The conditions for admission shall be monitored by the statewide bar counsel.

Francis J. Foley III
Judge

B. **Unpublished order of the Honorable Francis J. Foley, III, Connecticut Superior Court Administrative Judge, Judicial District of Windham, *Connecticut v. Williams*, MI04-6287590 (Conn.Super, 18 July 2005)**

Docket No. MI04-6287590
Judicial District of Windham at Danielson
July 18, 2005

State of Connecticut
vs
Stephen John Williams
Juris # 309679

Memorandum of Decision
Order to Show Cause re: Attorney discipline

On or about April 29, 2004, the respondent, Stephen John Williams was stopped within the judicial district of Windham for a motor vehicle offense, namely speeding. The respondent who is admitted to the practice of law in Connecticut elected not to pay the $148 speeding ticket and elected to contest the infraction.

While the respondent has a Connecticut address of 12 September Road, Storrs, CT, he listed a street address in Hong Kong, China as his address on the Complaint Ticket. At some point in time the respondent provided the Central Infraction Bureau with a post office box, 6572, in Hong Kong. It further appears from the file that the Central Infraction Bureau and the clerks of the court in GA 11, have used that post office box address for most correspondence. For reasons not explained, the respondent closed the post office box on July 15, 2004. Thereafter, the Connecticut authorities continued to use the Hong Kong post office box to contact the defendant. It may also be noted that normal postage as used by the Connecticut authorities, is insufficient for international *airmail*. Regular mail travels at the slower surface rate.

A notice was sent to the respondent for a court appearance on November 5, 2004. He failed to appear. The case was closed out pursuant to General Statute 14-140. The Commissioner of Motor Vehicles office sent notice of suspension of respondent's Connecticut driving privileges. On February 23, 2005 the respondent alleges that he was stopped by police

while in Manchester, Connecticut and issued a summons for operating a motor vehicle under suspension in violation of § 14-215.

Thereafter, the respondent filed lengthy manuscripted motions to reopen and a motion to waive the fee in the underlying Danielson motor vehicle case.[1] Those two motions were granted on March 16, 2005 (Riley, J). At this point, if the defendant simply provided a copy of his receipt to the Department of Motor Vehicles (DMV), his license would have been restored and he was then free to proceed to contest the underlying speeding ticket. All prior issues of the Clerk's performance or non-performance or of the Commissioner of Motor Vehicles and the Central Infraction Bureaus' [sic] obligations were a nullity and of profound irrelevance and inconsequence since Mr. Williams had been restored to the *status quo ante*. Mr. Williams did not pursue the simple procedures easily followed by the lay persons who come before the court upon reopening their cases.

Mr. Williams could have either withdrawn his motion for mandamus or marked the motion "off". The respondent instead pursued a series of letters and pleadings each of which bespeak of his impracticality and unfamiliarity with Connecticut rules of practice. For reasons which are not apparent to the court, Mr. Williams pursued the motion for

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[1] A simple one page motion is available in the Clerk's office. The motions are routinely granted for any valid reason. Providing a receipt from the Clerk's office to the Department of Motor Vehicles showing the reopening results in a restoration of driving privileges. The vast majority of such matters are handled by pro se litigants.

mandamus, seeking relief, wholly unnecessary to the restoration of his driving privileges. The respondent simultaneously filed letters with the Deputy Clerk of the Court instructing her on his intentions to call her as a witness, to bring all copies of regulations, guidelines and rules regarding notices to defendants [sic] and threatening to subpoena also the commissioner of motor vehicles. This correspondence, all on Mr. Williams' legal letterhead indicated to the clerk that this was in the nature of a separate adversarial proceeding and indicated that she, the clerk, should consider hiring independent legal counsel. Mr. Williams also advised the deputy clerk that "the prosecution has no role in this matter. I also believe it would be an ethical violation for the office of the prosecutor to represent your interests before the Court due to the obvious conflict of interest." The deputy clerk subsequently brought this matter to the attention of the undersigned Administrative Judge. Because of the highly irregular approach to this simple motor vehicle matter, on April 22, 2005 the Court issued an order to show cause to the respondent ordering him to appear and show cause why he should not be disciplined or suspended until such time as he completes approved course in legal ethics and Connecticut Practice and Procedure.

The order to show cause has been before the court on numerous occasions, each time the court has advised Mr. Williams to secure the benefit of counsel since his right to practice law was at issue. After three continuances for the respondent to obtain counsel, the respondent appeared again, saying he was unable to secure a lawyer willing to undertake to represent him. The respondent's dilatory pleadings

and failure to appear with counsel cannot be allowed to continue. That, in itself, is a passive form of obstructing the administration of justice.

The respondent, through his letters and pleadings has created a situation for himself wholly disproportionate to the underlying speeding infraction. Each of the pleadings in the file, which are a matter of record, and the letters which have been marked as court exhibits, obfuscate, inflame and attenuate a simple legal proceeding. This court is extremely concerned that Mr. Williams' ability to parlay a simple motor vehicle hearing into a monumental, unnecessary, time-consuming, labor-intensive and ineffectual attack on the Deputy Clerk of the Court, the Central Infraction Bureau and the Commissioner of Motor Vehicles constitutes a danger to the administration of justice and to the citizens of Connecticut who might unwittingly engage his ponderous services.

Mr. Williams testified at the direction of the court on June 10, 2005. The court denied the motion for mandamus since it was not a proper motion nor in accordance with the Practice Book. Neither §23-46 not §23-47 permit mandamus on a simple motion. It must be brought by writ, summons and complaint or by an order to show cause in an existing case. The court finds clear and convincing evidence that the respondent's use of this motion and the supporting letters to the deputy Clerk of Court and to the Assistant State's Attorney were abusive of both process and procedure. Pursuing the improperly filed motion after the court had granted the motion to open and motion to waive the fee was an entirely unnecessary, vexing and burdensome procedure. The

court is satisfied that even at this date, the respondent does not understand the proper procedure familiar to even lay litigants to obtain a restoration of their driving privileges. Neither does he appreciate the distress to others and the burdens his conduct creates to the efficient administration of justice.

The respondent under questioning by the court indicated that he was unsure of the date he was admitted to the bar but believed it to be around 1989, 1990 or 1991. He indicates he resides in Hong Kong, he has a house there, and he also lives in Connecticut. He indicates he has never represented a client and does not do anything for a living. Nonetheless, he is authorized to practice law and the court finds that he is, at present, not fit to practice before the courts of this state in the capacity of a Commissioner of the Superior Court.

ORDER

The court finds by clear and convincing evidence based upon the pleadings, letters and conduct before the court that Stephen John Williams should be suspended from the practice of law in order to safeguard the administration of justice and to protect the public from the unfitness of this respondent. The conduct of pursuing a meritless mandamus and intimidating the Deputy Clerk with improper unsolicited advice violates the Rules of Professional Conduct set forth in Practice Book [sic] § 1.1 Competence, to wit failure to abide by Practice Book Rules regarding pleadings; § 3.5(3) engaging in conduct intended to disrupt the tribunal; Practice Book [sic] § 4.4 Respect for the rights of third

persons; and §8.4 [sic] engaging in conduct prejudicial to the administration of justice.

Since the respondent does not presently engage in the active practice of law, a suspension will not disrupt any clients nor impose a financial hardship upon him. It will provide an opportunity for the respondent to inform himself regarding appropriate ethical conduct for attorneys and to familiarize himself with the rules of Connecticut practice and procedure if he wishes to practice as an attorney before the courts of this state.

Accordingly pursuant to §51-84 and to the inherent power of the court to inquire into the conduct of Commissioners of the Superior Court, Stephen John Williams is suspended for the practice of law for a period of six months. As a condition of his readmission he shall complete a Connecticut Bar Association approved course of instruction on legal ethics and Connecticut Practice and Procedure. The conditions for readmission shall be monitored by the statewide bar counsel.

This order shall be effective twenty days from the date of this order. Notice of this order shall be published in accordance with Practice Book rule § 2-54.

Judgement [sic] may enter accordingly at Danielson, Connecticut the 18th day of July 2005.

/s/
Foley, J.
Administrative Judge
Judicial District of Windham

Copies:
The Respondent
Clerk of the Court, Francis Orszulak
Statewide Bar Counsel

C. Unpublished order of the Honorable DiPentima, Chief Judge of the Connecticut Appellate Court, *Connecticut v. Williams*, A.C. 27416 (Conn.App., 6 October 2009)

APPELLATE COURT
STATE OF CONNECTICUT

No. AC 27416

State of Connecticut

v.

Stephen J. Williams

October 6, 2009

ORDER

Pursuant to the Appellate Court's corrected order of September 2, 2009, ordering the dismissal of the above-captioned appeal unless the defendant-appellant's brief was filed on or before September 23, 2009, and, as of this date said brief not having been filed, you are hereby advised that **the appeal is dismissed**.

By the Court,

/s/
Susan C. Reeve
Assistant Clerk-Appellate

Notice sent: October 6, 2009
Stephen J. Williams, self represented party
Office of the Chief State's Attorney
Michele C. Lukban, Senior Assistant State's Attorney
Office of the Chief Disciplinary Counsel
Hon. Francis J. Foley, III
Hon. Emmet L. Cosgrove
Hon. Michael E. Riley
Clerk, GA 11, MV04 6287590S
253/09-2269

ct

D. Unpublished order of the Connecticut Appellate Court, *Connecticut v. Williams*, A.C. 27416 (Conn.App., 10 December 2009)

APPELLATE COURT
STATE OF CONNECTICUT

No. AC 27416

State of Connecticut

v.

Stephen J. Williams

December 9, 2009

ORDER

The motion of the defendant-appellant, filed October 16, 2009, for reconsideration dismissal of appeal having been presented to the court, it is hereby **ordered** that the motion for reconsideration is granted, but the relief requested therein is denied. The appeal remains dismissed.*
*Bishop, J., is recused.

By the Court,
/s/
Susan Reeve
Assistant Clerk-Appellate

Notice sent: 12/10/09
Stephen J. Williams, self represented party
Office of the Chief State's Attorney
Michele C. Lukban, Senior Assistant State's Attorney
Office of the Chief Disciplinary Counsel
Hon. Francis J. Foley, III
Clerk, Danielson JD, (MV04-6287590S)

bjm

E. *Connecticut v. Williams*, 295 Conn. 917, 990 A.2d 868 (2010)

SUPREME COURT
STATE OF CONNECTICUT

NO. PSC-09-0269

State of Connecticut

v.

Stephen J. Williams

ORDER ON PETITION FOR CERTIFICATION TO APPEAL

On consideration of the petition by the defendant for certification to appeal from the Appellate Court [AC 27416], it is hereby ordered that said petition be, and the same is denied.

Vertefeuille, J., did not participate in the consideration or decision of this petition for certification.

BY THE COURT,
/s/
ALAN M. GANNUSCIO
ASSISTANT CLERK-APPELLATE

Dated: 3/25/2010
Notice sent: March 26, 2010
Clerk, Superior Court, W11DMV046287590S
Clerk, Appellate Court
Reporter of Judicial Decisions
SAO
Stephen J. Williams, self represented party
Michele C. Lukban, Senior Assistant State's Attorney
Office of the Chief State's Attorney-Appellate Bureau
Office of the Chief Disciplinary Counsel

Stephen J. Williams, self represented party, in support of the petition; Michele C. Lukban, Senior

Assistant State's Attorney and Mark A. Dubois, Chief Disciplinary Counsel, in opposition.

ct

F. Unpublished order of the Connecticut Supreme Court denying reconsideration (Conn.Sup., 25 June 2010)

SUPREME COURT
STATE OF CONNECTICUT

No. AC 27416

State of Connecticut

v.

: June 24, 2010

Stephen J. Williams

ORDER

The motion of the defendant-petitioner, filed April 22, 2010, for reconsideration of the March 25, 2010 order denying the petition for certification, having been presented to the court, it is hereby ordered **denied**. Vertefeuille, J., did not participate in the consideration or decision of this motion.

By the Court,
/s/
Michele T. Angers
Chief Clerk

Notice sent: June 25, 2010

Hon. Francis J. Foley III
Clerk, Danielson Superior Court at GA 11, (MV04-6287590S)
Reporter of Judicial Decisions
SAO
Stephen J. Williams, self represented party
Michele C. Lukban, Senior Assistant State's Attorney
Patricia King, Office of the Chief Disciplinary Counsel

ct

G. U.S. Const. amend. XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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(2)

Supreme Court, U.S.
FILED
MAR 15 2011
OFFICE OF THE CLERK

No. 10-990

Supreme Court of the United States

STEPHEN J. WILLIAMS,

Petitioner,

vs.

FRANCIS J. FOLEY, III,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE WINDHAM GEOGRAPHIC AREA OF THE CONNECTICUT SUPERIOR COURT

SUPPLEMENTAL BRIEF OF PETITIONER

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ADDITIONAL QUESTION PRESENTED

A. Did the Clerk of this Court prevent Petitioner from receiving due process of law?

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STATEMENT OF THE CASE

A. Relevant proceedings in this Court

On 22 November 2010, Petitioner filed a petition for writ of certiorari entitled "Stephen J. Williams, Petitioner, v. Francis J. Foley, III, Respondent." Petitioner's petition sought a writ of certiorari directed to the Windham Geographic Area of the Connecticut Superior Court. On 3 February 2011, the Clerk docketed Petitioner's petition under the caption "Stephen J. Williams, Petitioner v. Connecticut". The Clerk's docket entry erroneously indicates that Petitioner sought certiorari against the State of Connecticut. The Clerk's docket entry did not indicate that Petitioner sought certiorari against the Honorable France J. Foley, III. The Clerk's docket entry also erroneously indicates that Petitioner sought certiorari directed towards the Connecticut Appellate Court when in fact Petitioner sought certiorari directed towards the Superior Court.[1]

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[1] Petitioner explained in his petition that "[the] petition [was] correctly captioned and the writ of certiorari, if issued, would be correctly directed to the Connecticut Superior Court See Sup.Ct.R 12 4, 12 6 and 14.1(b). See also Gressman, Geller, Shapiro, Bishop & Harnett, Supreme Court Practice, p 431 (9th ed , 2007), ('[C]ounsel is not bound by the caption used in the court below, counsel for the petitioner is free to clarify or improve it so as to portray accurately the adversary position of the contending parties before the Court') The caption in Connecticut's appellate courts was controlled by Conn Practice Book § 68-4 ('Cases brought to the supreme or appellate court otherwise than by writ of error shall be entitled as they were in the judgment of the trial court ') Judge Foley undertook his order to show cause under the heading of the ongoing criminal prosecution Whilst Petitioner challenged both the criminal

Petitioner immediately filed a motion in which he "ask[ed] that the Court order the Clerk of the Court to correct the docket to accurately reflect the petition filed by Petitioner Motion to Correct Ministerial Errors in the Docket, 5 February 2011, p. 4. Petitioner's motion complied in all respects with the Rules of the Court and therefore was required to be filed by the Clerk. Sup.Ct.R. 1.1. Nonetheless, the Clerk neither filed the motion nor returned it.

On 19 September 2006, the Connecticut Attorney General entered an appearance in the Connecticut Appellate Court in this case on behalf of Respondent. Petitioner immediately moved to disqualify the Attorney General. Motion to Disqualify Attorney General Richard Blumenthal as Counsel to Judge Francis J. Foley, III, 13 October 2006. The Attorney General responded by requesting that the Connecticut Judicial Branch assume responsibility for Respondent's legal defense. Disciplinary Counsel's Objection to Defendant/Appellant's Motion to Disqualify, 18 December 2006, p. 8. As a result, Martin Libbin, Deputy Director of the Legal Services Division of the judicial branch, instructed Connecticut's Office of the Chief Disciplinary

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conviction and his disciplinary suspension in the Connecticut courts, before this Court he now only challenges Judge Foley's suspension order. Furthermore, as neither the Connecticut Appellate Court nor the Connecticut Supreme Court considered the matter on its merits, the writ of certiorari must be directed to the Connecticut Superior Court. "The controlling principle is that the writ should be directed to the highest court of the state that actually ruled on the merits." Supreme Court Practice, p 439 See also *R J Reynolds Tobacco Co v Durham County, N C.*, 479 U S 130, 138-9 (1986) Here, the only court to rule on the merits was the Superior Court." Petition, p 11, footnote

Counsel to enter a substitute appearance on behalf of Judge Foley. Id. This was done. Appearance, 31 October 2006. Finally, the Appellate Court dismissed Petitioner's motion to disqualify "in light of the in lieu appearance filed on October 31, 2006, by the Office of the Chief Disciplinary Counsel." Appellate Court Order, 21 November 2006.

Despite this procedural history, Attorney Gregory T. D'Auria, who is Senior Appellate Counsel in the Office of the Connecticut Attorney General, filed an appearance in this Court "as Counsel or Record for all respondents". D'Auria Appearance & Waiver, 16 February 2011.[2]

Petitioner immediately filed a motion asking that the Court strike Attorney D'Auria's appearance. Motion to Strike Appearance and Waiver, 19 February 2011. This motion also complied in all respects with the Rules of the Court. Nonetheless, the Clerk neither filed the motion nor rejected it.

One day after filing Petitioner's Motion to Strike, Petitioner sent Attorney D'Auria the following by email:

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[2] Petitioner emailed Attorney D'Auria asking who specifically he represented Emails, Williams to D'Auria, 17 February 2011 Attorney D'Auria responded "I understand there to be only one respondent Judge Foley So I represent him" Id Nonetheless, Senior Assistant State's Attorney Michele Lukban has also filed an appearance in this proceeding on behalf of the Office of the Chief State's Attorney who was not a party in the state courts and is not a party to this proceeding Lukban Appearance & Waiver, 17 February 2011 Notably, Ms. Lukban's Waiver was also served upon Attorney Libbin Id

> Interestingly, I also received an appearance & waiver yesterday from SASA Michele Lukban on behalf of the Chief State's Attorney. Apparently, she does not share your view that the only respondent to this proceeding is Judge Francis Foley.
>
> I personally found it especially interesting that Atty. Lukban felt it necessary to copy her appearance to Deputy Director Martin Libbin even though he is supposedly not a party in this proceeding.
>
> When Chief Disciplinary Counsel Mark DuBois filed his appearance on behalf of Judge Foley, it subsequently became clear that he had actually been instructed by Atty. Libbin. In fact, he later admitted to the Appellate Court that Judge Foley was not actually his client and that he was actually acting under the direction of Atty. Libbin.
>
> Am I safe in assuming that you have also been instructed by Atty. Libbin? In fact, would it be a safe assumption to say that you have never actually met with or been instructed by your new supposed client, Judge Foley, just as Atty. DuBois had never actually been instructed by his claimed client? And, as it subsequently became clear, just as AAG Robert Snook had not actually been instructed by or met with his claimed client when he also filed his initial appearance on behalf of the AG?

Attorney DuBois had initially filed an appearance on behalf of Respondent. Once the Connecticut

Appellate Court discovered that he had not actually been instructed by Respondent to file an appearance, and therefore did not have his authority to enter that appearance, it ordered that

> in light of the statements by the Office of Chief Disciplinary Counsel that it is representing the Judicial Branch and as it conceded that it does not represent Judge Foley nor is Judge Foley a party to the underlying action or this appeal, the Disciplinary Counsel is ordered to file an appearance accurately reflecting its representation in this appeal.

Connecticut v. Williams, Docket No 27416 (Conn.App., 14 March 2007).

Attorney D'Auria's failure to respond to the accusation that he is also acting under the instruction of Attorney Martin Libbin plus the newly discovered facts surrounding these events and the prior history of this case made it clear that Attorney D'Auria was misrepresenting his authority when he claimed to have been instructed by Respondent. Consequently, Petitioner filed a supplemental motion asking that the Court strike Attorney D'Auria's appearance. Supplemental Motion to Strike Appearance and Waiver, 2 March 2011. Petitioner's supplemental motion complied in all respects with the Rules of the Court and was also required to be filed by the Clerk. Nonetheless, the Clerk once again neither filed the motion nor rejected and returned it.

In fact, the Clerk docketed Attorney D'Auria's appearance as being Counsel of Record for

"Connecticut" despite the State of Connecticut not actually being a respondent in this proceeding.[3]

Apparently believing that the State of Connecticut was a party to these proceedings, Senior Assistant State's Attorney Michel Lukban also entered an appearance on behalf of the Office of the Chief State's Attorney. However, the Clerk docketed Attorney Lukban's appearance as being Counsel of Record for the "Office of the Attorney General". The Clerk also misstated Attorney Lukban's employer as being the Office of the Attorney General.

Then, despite no waiver or brief actually having been received on behalf of the sole named respondent, Judge Foley, on 2 March, five days prior to the end of the response period, the Clerk distributed the Petition. See Sup.Ct.R. 15.5.

REASONS FOR GRANTING THE WRIT

A. The Clerk of this Court denied Petitioner due process of law.

The Equal Protection and Due Process Clauses of the federal constitution require that where a right of

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[3] Connecticut's Attorney General is specifically precluded from acting in criminal matters. *Blumenthal v Barnes*, 261 Conn. 434, 460, 804 A 2d 152, 168 (2002), quoting 1897 Public Act 191, § 2 ("The attorney-general shall have general supervision over all legal matters in which the state is an interested party, *except those legal matters over which the state's attorneys have direction*) (emphasis supplied in *Barnes*)

appeal is afforded, a fair procedure must be provided. *Griffin v. Illinois*, 351 U.S. 12, 18 (1956).[4]

Who would ever argue that a procedure whereby the Clerk of the Court edits and misrepresents the pleadings filed by the parties, even going to far as to misrepresent the parties, their counsel and even the relief requested, affords due process of law? And who would ever argue that a procedure whereby the Clerk of the Court blocks the filing of valid pleadings and either destroys or suppresses those pleadings rather than to return them to the party in a timely manner so as to prevent detection of his actions and prevent the parties from taking timely action based on his misconduct provides due process?

This circumstance is particularly egregious in that it is obvious that the purpose in not filing Petitioner's motions is to cover up failings within the Clerk's office so that the Court cannot become aware of these failings. In this way, the Office of the Clerk is able to defeat the Court's supervisory responsibilities over that office.

Nor is this the first time that this has happened. In prior petitions filed by Petitioner, the Clerk has also misrepresented the parties, the certiorari court and the orders of this Court. See *Williams v. District of Columbia Court of Appeals*, 552 U.S. 1141 (2008), *rehearing denied*, 552 U.S. 1305 (2008), and *Williams v. Appellate Division of the Supreme Court of the State of New York, First Judicial Department*, 553 U.S. 1018 (2008). In these two cases, the Clerk

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[4] U S Const Amend V is applicable in the federal courts, including in this Court

ignored correspondence, rejected and returned correspondence and refused to file valid motions seeking the correction of these errors. See, e.g., letters from Mr. Erik Fossum to Petitioner, 23 May and 5 June 2008. Some, but not all, of these errors were corrected only after the Honorable Joseph Courtney wrote directly to the Clerk on Petitioner's behalf seeking a response. Letter Representative Courtney to Mr. William Suter, 19 September 2008; letter Suter to Courtney, 23 December 2008.[5]

In 1923, Chief Justice Taft wrote that "[t]he jurisdiction of the Supreme Court to review cases by way of certiorari was not conferred upon this Court merely to give a defeated party ... another hearing." *Magnum Import Co. v. Coty*, 262 U.S. 159, 163 (1923). However, the presumption is that the party did at least receive a hearing below. The core role of all of our courts is to do justice. Here, where Petitioner's petition makes out a clear case of the denial of the right to be heard by state courts which clearly have an interest in the outcome of the controversy, this Court's subsequent denial of due process is particularly egregious.

B. Subsequently discovered authorities.

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[5] In the case of *Williams v Appellate Division of the Supreme Court of the State of New York, First Judicial Department*, 553 U S 1018 (2008), the Clerk continues to misstate the named respondent and continues to indicate the certiorari court as the Appellate Division of the Supreme Court of New York even though Petitioner's petition correctly sought certiorari directed to the New York Court of Appeals, which *did* address the matter on its merits See *R J Reynolds Tobacco Co*

Petitioner argues in his petition that "[i]nstitutionalized bias within the Connecticut judiciary has denied Petitioner a determination by a panel of unbiased appellate court justices and judges." Petition, pp. 14-23. In particular, Petitioner argues that Connecticut's appellate courts avoided addressing the merits of Petitioner's appeal so as to avoid consideration of any claims which might embarrass the Connecticut judiciary and result in a diminution of the judiciary's political power. Id., pp. 17-23.

Subsequent to the filing of Petitioner's petition, in an article which discussed the likely picks to fill a current vacancy on the Connecticut Supreme Court, the author wrote:

> [Superior Court Judge] Keller was the only legally-trained member of the Judicial Review Council who voted to acquit former Chief Justice William J. Sullivan, who faced charges of ethics violation after he delayed the printing of a controversial court decision in 2006 in an attempt to smooth colleague Peter T. Zarella's bid to succeed him.
>
> In Keller's support for the embattled Sullivan, and for her diligent work to improve the judicial system, Keller gained popularity among many of her peers as "a judge's judge."

Scheffery, Thomas, *Picking Judges, Building Courts*, 7 February 2011 Conn.L.Trib. Attorney Scheffery fails to attribute his claims in his article. However, he subsequently advised that the "'judge's judge' quote is from a judge who, I've found, has

consistently known the score." Email, Scheffery to Williams, 8 February 2011.

The quote demonstrates that the Connecticut judiciary functions as a unified body in which individual judges are expected to serve the common interest, and do in fact do so even to the point of it affecting their decisions in individual cases, as well as that there is a perception among members of the judiciary that such support is rewarded and that it is necessary to act in this manner if a judge wishes to advance his career. What is breathtaking is that this is spoken of as if this was acceptable way for a judge to behave rather than being a violation of a judge's ethical code of conduct. See Conn. Code of Judicial Conduct (2011), Rules 1.2, 1.3, 2.2, 2.4.

Subsequent to the filing of Petitioner's petition, Petitioner became aware of *Green Party of Connecticut v. Lenge*, Docket No. 10-795 (Sup. Ct.), which is tipped as a possible candidate for the granting of certiorari by this Court. The trial court devoted three pages and numerous footnotes to cataloguing some of Connecticut's recent corruption. See *Green Party of Connecticut v. Garfield*, 590 F. Supp. 2d 288, 304-309 (D.Ct., 2008); *Green Party of Connecticut v. Garfield*, 648 F. Supp. 2d 298, 307-309 (D.Ct., 2009) (relevant portion included in appendix). As subsequently summarized by the Second Circuit:

> Sadly, the ignominy of public corruption [in Connecticut government] was not limited to [ex-Governor] Rowland. As the District Court discussed in detail, the "Rowland scandal was but one of the many corruption scandals involving elected officials in state and local

> government that helped earn the state the nickname 'Corrupticut.'" See [648 F. Supp. 2d] at 307-08 (cataloging the scandals); see also id at 307 & n. 9 (discussing the decline of the reputation of Connecticut's state government).

Green Party of Connecticut v. Lenge, 616 F.3d 213, 219 (2nd Cir., 2010). Although the District Court limited itself to corruption scandals involving elected officials, there have been numerous other corruption scandals involving appointed state officials including at the highest level of Connecticut's judiciary. See, e.g., *Judicial Review Council, Memorandum of Decision: In re Sullivan*, 68 Conn.L.J. 24 (12 December 2006), in which then-Chief Justice William Sullivan was disciplined for engaging in cronyism. Clearly, *Green Party of Connecticut* supports Petitioner's thesis that corruption is systemic throughout Connecticut's state government.

CONCLUSION

For the foregoing additional reasons, a summary reconsideration order is appropriate in this matter. See Sup. Ct. R. 16.1. Petitioner therefore asks that this Court grant certiorari, vacate the order denying certification by the Connecticut Supreme Court and remand to the state courts for consideration.

Respectfully submitted,

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APPENDIX

A. *Green Party of Connecticut v. Garfield*, 648 F. Supp. 2d 298, 307-309 (D.Ct., 2009) (excerpt only).

1. Connecticut's Corruption Scandals

On June 21, 2004, John Rowland resigned as Governor following accusations that he had improperly accepted over $100,000 dollars worth of gifts and services from state contractors, including free or reduced vacations in Florida and Vermont, construction work on his Connecticut lake cottage, and free private jet flights to Las Vegas and Philadelphia, in exchange for facilitating the award of several state contracts. Feinberg Decl. Ex. 3. Rowland subsequently pled guilty to federal criminal charges, including federal income tax evasion and conspiracy to defraud the state and its citizens of the honest services of its Governor. Feinberg Decl. Exs. 2 & 4. In March 2005, Rowland was sentenced to a term of imprisonment of one year and a day and ordered to pay $82,000 in fines. Feinberg Decl. Ex. 4. Rowland's chief of staff, Peter Ellef, his deputy chief of staff, Lawrence Alibozek, and several state contractors, including William Tomasso and the Tunxis Management Company, also pled guilty to federal charges stemming from their roles in that corruption scandal. Feinberg Decl. Exs. 5-10.

The Rowland scandal was but one of the many corruption scandals involving elected officials in state and local government that helped earn the state the nickname "Corrupticut." *See, e.g.*, Paul von

Zielbauer, *The Nutmeg State Battles the Stigma of Corrupticut*, N.Y. Times, Mar. 28, 2003 ("Nowadays, from Storrs to Stamford, there are jokes about living in Corrupticut, Connection-icut or, the new favorite, Criminalicut.").[9]

[*308] For example, in 1999 State Treasurer Paul Silvester pled guilty to federal racketeering and money laundering charges stemming from a kick-back scheme involving state pension investments. Feinberg Decl. Ex. 11. In return for investing over $500 million of the state's pension funds with certain financial institutions, Silvester directed millions of

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[9] *See also* Feinberg Decl. Ex. 22; Marc Santora, *Political Memo; The Whiff of Corruption Persists in Connecticut*, N.Y. Times, Sept. 21, 2003 (referring to the brewing Rowland scandal, "[w]hile the investigation continues, each new development chips away at the layer of trust between Connecticut's residents and their elected officials"); Stan Simpson, *Plain Talk About Corruption*, Hartford Courant, Oct. 8, 2003, ("For its size, little Connecticut -- proportionately -- just may be the most corrupt state in the union. No longer is it a far-fetched notion to link public officials here with jail time -- or potential time."); Richard Lezin Jones, *Our Towns; Move Over, New Jersey. New Trend Puts the Con in Connecticut*, N.Y. Times, Nov. 30, 2003 (noting that the state's mounting corruption scandals "may be helping to give otherwise refined Connecticut an unexpected and unwanted mark of distinction in the region: the state with the most dysfunctional politicians"); Avi Salzman, *He's Leaving. Now the State Has to Restore its Reputation*, N.Y. Times, June 27, 2004 ("A half-decade of mounting political scandals have turned Connecticut into a punchline of political backwardness."); David A. Fahrenthold, *Political Scandals Refuse to Go Away in 'Corrupticut'; Officials' Wrongdoing Persists After Governor's 2005 Conviction*, Wash. Post, July 3, 2006 ("The past few years have revealed so many tales of graft, malfeasance and all-purpose criminality by public servants in Connecticut that it's hard to choose the most brazen.")

dollars in "finder's fees" to be paid to various friends and associates, who then funneled part of the money back to his campaign fund. Feinberg Decl. Exs. 11-17. Silvester's various schemes resulted in the convictions of many individuals and companies.[10]

In September 2005, State Senator Ernest Newton II pled guilty to federal bribery charges in connection with a kick-back scheme involving a non-profit

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[10] In September 2002, after pleading guilty to conspiracy to launder money, Peter Hirschl was sentenced to a term of imprisonment of five months, to be followed by five months of home confinement, and was ordered to pay a $15,000 fine In 2003, Frederick McCarthy, Chairman of Triumph Capital, pled guilty to corruptly rewarding a public official and was sentenced to a prison term of a year and a day. Lisa Thiesfield, one of Silvester's friends, pled guilty to corruptly aiding and abetting a public official in accepting a reward, her sentence included a six-month term of imprisonment Two other co-conspirators were convicted after a jury trial. Ben Andrews was convicted of nine counts, including bribery, mail and wire fraud, and money laundering and was sentenced to a 30-month term of imprisonment for his role in funneling the pension funds to private equity firm Landmark Partners. In addition, former assistant State Treasurer George Gomes was sentenced to two years' probation and fined $ 1,500 after pleading guilty to mail fraud for his role in the scheme. Silvester's brother, Mark Silverster, pled guilty to conspiracy to solicit and accept corrupt payments and was sentenced to a 21-month term of imprisonment and fined $40,000 In exchange for his cooperation with federal prosecutors, Christopher Stack was never charged Charles Spadoni, Triumph Capital's General Counsel, was convicted on eight counts, including racketeering, racketeering conspiracy, bribery, and wire fraud and sentenced to 36 months' imprisonment Spadoni's case remains ongoing, however In September 2008, the Second Circuit reversed and remanded for a new trial on several of those counts, determining that the government had suppressed material, exculpatory evidence *United States v Triumph Capital, Inc*, 544 F 3d 149, 152 (2d Cir 2008)

organization in Bridgeport. Feinberg Decl. Ex. 19. In return for a $5,000 bribe, Newton agreed to assist the non-profit group, Progressive Training Associates, Inc., in its quest to secure a $100,000 grant from the state. *Id.* Newton also pled guilty to federal mail fraud and income tax evasion charges for diverting $40,000 in campaign contributions to his personal use. *Id.* Newton was ultimately sentenced to 60 months in federal prison and ordered to pay over $13,000 in restitution. Feinberg Decl. Ex. 21. *See also United States v. Newton*, Case No. 3:05cr233 (AHN), 2007 U.S Dist. LEXIS 26287, 2007 WL 1098479 (D. Conn.) (denying resentencing), *aff'd*, 226 Fed. Appx. 80 (2d Cir. 2007).

Although municipal officials are not eligible to receive CEP funding, nor are they subject to the CFRA's bans on contributions and solicitations from lobbyists and contractors, corruption cases involving local officials are nevertheless still relevant to the extent that they have contributed to the atmosphere of public distrust and perceived corruption of elected officials in the state. For example, in 2003, the mayor of Bridgeport, Joseph Ganim, was convicted of federal racketeering, extortion, bribery, mail fraud, and income tax evasion arising from a scheme to award city contracts in exchange for illegal kickbacks from contractors. *United States v. Ganim*, Case No. 3:01cr263 (JBA), 2006 U.S. Dist. LEXIS 26569, 2006 WL 1210984, at *1 (D. Conn. 2006). At least three contractors also pled guilty to their role in that scheme. *United States v. Lenoci*, 377 F.3d 246, 248 (2d Cir. 2004) (noting that "Lenoci [*309] also agreed to raise funds for the mayor's anticipated campaign for governor, in return for Ganim's support for the [development project]"); *Bridgeport Harbour Place I, LLC v. Ganim*, 269 F. Supp. 2d 6, 7 (D. Conn.

2002) (noting that the three contractors "acknowledged that they corruptly provided bribes, kickbacks, and other things of value . . . in return for preferential treatment from Mayor Ganim in connection with the awarding of city contracts").[11]

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[11] In addition, though not relevant to the events leading to the passage of the CFRA, it is worth noting that corruption scandals involving municipal officials continue to roil the state. For instance, the mayor of Hartford, Eddie Perez, was recently arrested on state bribery charges stemming from allegations that he accepted $40,000 worth of home renovations in exchange for facilitating the receipt and oversight of city contracts. *See, e.g.*, Jeffrey B. Cohen and Matthew Kauffman, *Hartford Mayor Arrested on Bribery Charges*, Hartford Courant, Jan. 28, 2009. Additionally, Shelton developer James Botti is scheduled to stand trial in October 2009 on federal bribery charges stemming from allegations that he bribed an unnamed Shelton politician, described in the indictment as "Public Official # 1," in exchange for help pushing through development projects in the town. *See United States v. Botti*, Case No. 3:08cr230(CSH), 2009 U.S. Dist. LEXIS 88495 (D. Conn.).